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DIGEST OF WATER POLLUTION CONTROL LEGISLATION ... COLORADO

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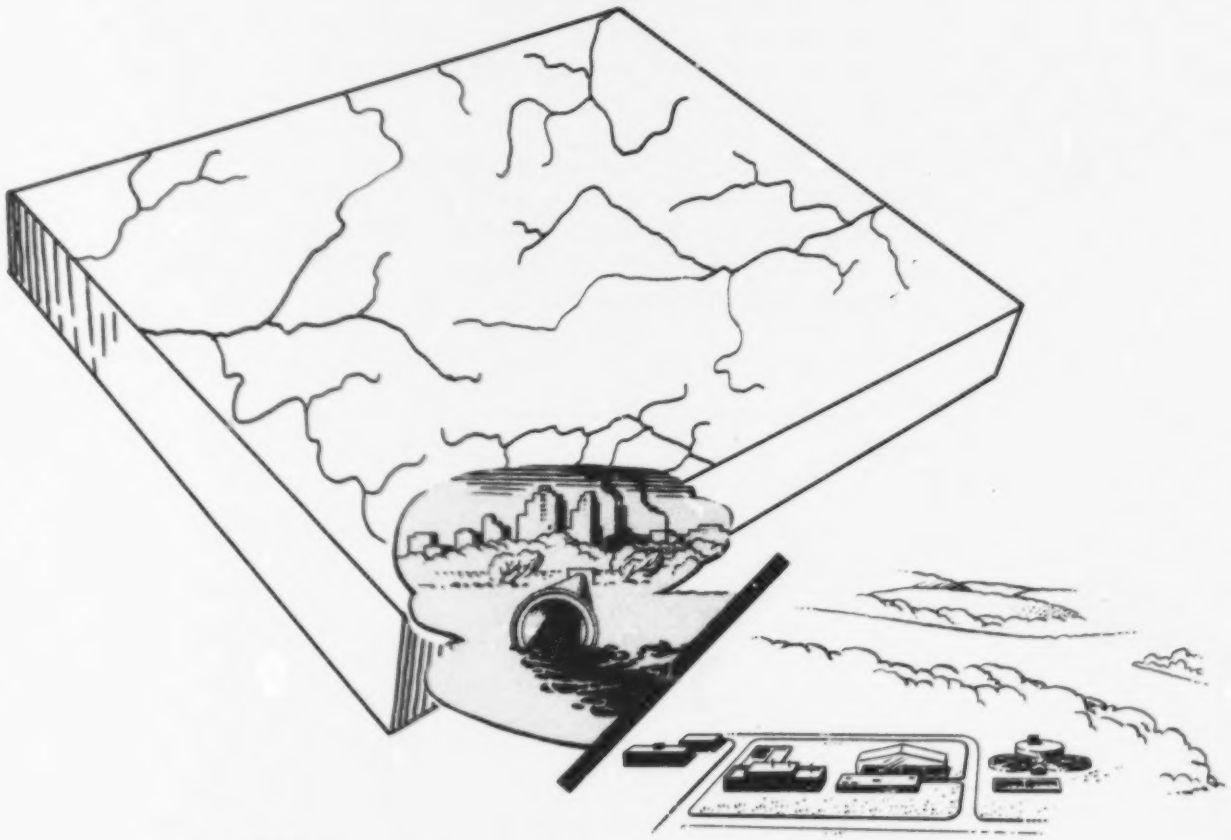

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U. S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

September 1958

DIGEST OF COLORADO WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

The State agency which has most functions pertaining to water pollution control is the State Department of Public Health.

The State Board of Health determines the general policies to be followed in administering and enforcing the public health laws of the State. It issues orders, and adopts such rules, regulations, and standards as are deemed necessary to administer and enforce the public health laws of the State (Ch. 66-1-8). 1/

The State Department of Public Health has authority to investigate and control the causes of epidemic and communicable diseases affecting the public health; abate nuisances when necessary to eliminate sources of epidemic or communicable diseases; establish and enforce minimum general sanitary standards as to the quality of water supplied to the public and as to the quality of the effluent of sewerage systems and trade wastes discharged upon the land or into the surface or ground waters, and advise with municipalities, utilities, organizations and individuals concerning the methods or processes believed best suited to provide the protection or purification of water and the treatment of sewage and trade wastes to meet such minimum general sanitary standards; establish sanitary standards, and makes sanitary, sewerage and health inspections and examinations for charitable, penal, and other public institutions; and enforce the public policy of the State with regard to the pollution of the waters of the State by human excreta (Ch. 66-1-7, 1955 Cum. Supp., Ch. 66-1-7(19)).

1/ Citations in this digest refer to the Colorado Revised Statutes Annotated, 1953, and the 1955 Cumulative Supplement thereto, unless otherwise noted.

II. ADMINISTRATIVE ORGANIZATION

A. State Board of Health

1. Composition and organization

The Board consists of nine members who are appointed by the Governor with the consent of the Senate. The Board elects from its members a President, a Vice-President, and such other officers as it determines. The Executive Director of the State Department of Public Health, in the discretion of the Board, may serve as Secretary of the Board. The Board holds regular meetings at least once every three months. Special meetings may be called by the President, the Executive Director of the State Department of Public Health or by a majority of the members of the Board (Ch. 66-1-3, 66-1-4).

2. Powers and duties

The Board determines general policies to be followed by the Division of Administration in administering and enforcing the public health laws and the orders, standards, rules and regulations of the Board. It acts in an advisory capacity to the Director on all matters pertaining to the public health. It may hold hearings, administer oaths, subpoena witnesses and take testimony in all matters relating to the exercise and performance of the duties and powers imposed upon it. It appoints special advisory committees to advise and confer with it concerning the public health aspects of any business, profession or industry within the State. It accepts, and through the Division of Administration, uses, disburses and administers all Federal aid or other property allotted to the State Department of Public Health for State and local public works or purblic health functions (Ch. 66-1-8).

3. Administrative powers

The Board is authorized to hold hearings on the basis of a tentative finding made by the Director that pollution by human excreta exists as provided by Ch. 66-1-7 (19), 1955 Cum. Supp. All findings of violations and orders for abatement thereof must be made by a majority vote of the members of the Board. Such decisions must be promptly served on the party in interest by registered mail and must set forth a reasonable time as determined by the Board for the abatement of any violations found to exist. All such decisions of the Board are subject to judicial review, and all orders of the Board issued in this regard may be enforced as any other standard rule, regulation, or order of the Board (1955 Cum. Supp., Ch. 66-1-8(8)).

B. State Department of Public Health

1. Composition

The Department consists of the State Board of Health and the Division of Administration. The Division of Administration includes the Office of the Executive Director (Ch. 66-1-2).

2. Powers and duties

The Department is authorized to investigate and control the causes of epidemic and communicable diseases affecting the public health; abate nuisances when necessary to eliminate sources of epidemic and communicable diseases; establish and enforce minimum general sanitary standards as to the quality of water supplied to the public and as to the quality of the effluent of sewerage systems and trade wastes discharged upon the land or into the surface or ground waters, and as to the quality of fertilizer derived from excreta of human beings or from the sludge of sewage disposal

plants (66-1-7). The Department either upon its own initiative or upon a petition filed with it, investigates the discharge or dispostion of sewage or any other matter containing or having had as a component part thereof human excreta in any stream, lake or body of water within the State. Its investigations or surveys may include engineering studies and bacteriological, biological and chemical analyses of the effluent or other matter so discharged or disposed of in said waters to the extent necessary to determine the facts and to establish ways and means of eliminating such violations of law, rules or regulations as may be found to exist. The Director must, within a reasonable time make tentative findings in writing which must set forth the matters investigated and must specify the violations, if any, found to have occurred, and the extent and degree thereof, together with a tentative determination of the person or persons, instrumentalities or agencies responsible, and also the method of eliminating the source or cause of the violation. If no violation is found the Director orders the proceedings dismissed, in which event the petitioners may have a judicial review thereof. If one or more violations are found, the tentative finding fixes a time and place for a hearing before the State Board of Health which must not be less than 30 days after issuance and service of the tentative findings. A copy of the tentative findings must be served by registered mail upon each person, agency or instrumentality alleged by the petition or determined by said findings to be responsible for the violation and upon at least one of the initiators of the petition; or service may be made in the same manner as is provided by the rules of civil procedure for personal service of process (1955 Cum. Supp., Ch. 66-1-7 (19)).

3. Enforcement

Any person, association or corporation who wilfully violates,

disobeys or disregards the provisions of the public health laws or the terms of any lawful notice, order, standard, rule or regulation issued pursuant thereto, or who wilfully fails to remove from private property under his control at his own expense, within 48 hours after being ordered to do so by the health authorities any nuisances, is subject to a fine of not to exceed $1,000 or imprisonment for not to exceed 1 year, or both, and in addition is liable for any expense incurred by the health authorities in removing any nuisance (Ch. 66-1-14).

4. Statutory Statement of policy

The health, safety and welfare of the inhabitants of the State of Colorado require that the streams, lakes and other waters of the State be kept free from pollution by human wastes, and it is therefore declared to be the public policy of the State that no discharge which contains human excreta shall be permitted to flow in the streams, lakes or other waters of the State, unless such discharge shall comply with all standards of the State Board of Health adopted pursuant to law; and in addition thereto, the number of coliform count in such discharge shall not average more than one thousand per milliliter, such average being based upon a total of not less than four samples taken at the rate of at least one sample per day over a period of four consecutive days, and the methods of examination used to determine such count shall be those set forth in Standard Methods for the Examination of Water and Sewage, Ninth Edition, prepared and published jointly by the American Public Health Association and the American Water Works Association, New York, 1946 (1955 Cum. Supp., Ch. 66-1-7 (19)).

III. OTHER STATE AGENCIES HAVING WATER POLLUTION CONTROL FUNCTIONS

Persons desiring to build a dam or other obstruction in a public stream containing fish must first give written notice to the Colorado Game

and Fish Commission and thereafter comply with the reasonable directions of the Commission in relation to the construction and maintenance of a fishway therein (Ch. 62-5-10). In case of dispute between the Commission and any owner or operator as to the necessity, character, maintenance or repair of any fishway, the same may be judicially determined (Ch. 62-5-12). No sawdust, tailings, or other deleterious or poisonous substance may be allowed to run or pass into or pollute any public waters containing fish, or deposited or left where it may be carried by natural causes into such waters, in such quantities as to destroy or be detrimental to the fish or spawn therein (Ch. 62-5-13). Every dam or other artificial obstruction, every placer mine, mill, reduction plant or other industrial enterprise, constructed, maintained or operated in violation of the Act is declared unlawful and a continuing public nuisance and the same may be enjoined or abated or its objectionable features modified (Ch. 62-5-14). Whenever such an obstruction or pollution is alleged to exist, the Commission, any citizen or the owner or operator of such obstruction or industry may file a petition in the District Court of the county wherein the obstruction or pollution exists for the purpose of having an equitable determination of the fact, and a temporary injunction may issue upon notice, if the fact of obstruction or pollution is evident and the necessity is urgent (Ch. 62-5-15). The court determines the issues having due regard to the public welfare. It may order the adoption by the owner or operator of such means as may be reasonable and practicable to prevent or lessen the injurious effect upon the fish and their propagation; or may abate the obstruction, or perpetually enjoin the operations which cause the injury, or render such other judgment as the rights of the case may require. In making its determination the court is not precluded from considering the other beneficial uses to which such waters are or may be applied (Ch. 62-5-18).

The City and County of Denver has authority to control pollution on the South Platte River and Tributaries above Clear Creek, such control to keep the waters safe for domestic purposes. (Ch. 36-18-4,5).

The Oil and Gas Conservation Commission is authorized, among other things, to require the drilling, casing, operation, and plugging of wells in such manner as to prevent the intrusion of water into oil or gas stratum, the pollution of fresh water supplies by oil, gas or salt water or brackish water, and require measures to prevent blowouts, explosions, cave-ins, and seepage (1955 Cum. Supp., Ch. 100-6-15 (1) (c)).

IV. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

In order to prevent waste and pollution of underground waters a well driller or a private driller must submit an application and secure a license for the drilling of a well from the Colorado Water Conservation Board (Ch. 147-18-1 et seq.).

It is unlawful for anyone to float logs or other timber products in State waters without first procuring a permit therefor from the State Engineer (Ch. 112-8-2).

It is unlawful to throw or discharge into any stream of running water, or into any ditch or flume in the State any obnoxious substance, such as refuse matter from slaughter house or privy, or slops from eating houses, or any other fleshy or vegetable matter which is subject to decay in the water. Violation is punishable by a fine of not less than $100 nor more than $500 (Ch. 40-12-22).

It is unlawful to empty or flow oil, petroleum or other oleaginous substance into any of the waters of the State, or deposit or cause the same to be deposited at such a distance that it may be carried into such waters

by natural causes. Violation is a misdemeanor and upon conviction is punishable by a fine not exceeding $1,000 or imprisonment in county jail not exceeding 6 months, or both (Ch. 40-12-23).

It is unlawful to put any dead animal or part of the carcass of any dead animal into any lake, river, creek, or pond. Violation is a misdemeanor (Ch. 66-3-12).